IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1353 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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KRISHNAKANT KANAIYALAL SHAH - Appellant(s)
Versus
SIRAJMIYA DIWANMIYA DELETED. & ANR. - Respondent(s)

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Appearance :
Shri D. F. Amin for Appellant(s).
Ms. Maya Desai for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/08/2007

ORAL JUDGMENT

The appellant, being aggrieved by the award dated 11th

March, 1988 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Nadiad in M.A.C.P. No.133 of 1984, is before this Court seeking enhancement in the compensation amount.

2. In absence of any cross appeal or cross objections by the other side, it is not necessary to refer to the facts relating to accident, rashness, negligence and liability of the respondents.

3. After taking me through the evidence, specially, income tax returns produced at Exhs.39 and 40, it is submitted that the income of the claimant was showing an upward trend and the income was Rs.28,000/- in the first year and Rs.33,600/- in the second year, which the learned Tribunal found to be Rs.35,000/-. At least the prospective income could have been held to be Rs.40,000/-. It was also submitted that in paragraph 28 of the judgement, the learned Tribunal below found that the parties agreed that the medical bills, etc. are to the tune of Rs.50,835/-, but, erred in awarding a sum of Rs.45,000/- only.

4. Ms. Maya Desai, learned Counsel for the respondent, on the other hand, has opposed the appeal.

5. So far as the medical bills, etc. are concerned, from paragraph 28 of the judgement of the learned Tribunal, it would appear that the learned Tribunal had recorded the findings agreed at the bar

that the medical expenses were to the tune of Rs.50,835/- This should have been rounded off to Rs.51,000/- and the learned Tribunal was required to award the said amount. Without any rhyme or reason, the learned Tribunal reduced that amount to Rs.45,000/-, which, in the opinion of this Court, was not justified. Under the head of medical expenses and bills, the appellant would be entitled to an additional sum of Rs.6,000/-.

6. After going through the income tax returns, I must hold that the income of the appellant was showing an upward trend and the learned Tribunal below could not hold that the maximum income could be Rs.35,000/- per year. In the opinion of this Court, the income should have been assessed at Rs.40,000/- and the loss at the rate of 15% should have been assessed at Rs.6,000/-. Under this count also, the appellant would be entitled to an additional amount of Rs.7,500/- per year, applying the multiplier of 10 (ten), as applied by the learned Tribunal below. I must hold that the appellant would be entitled to an additional sum of Rs.7,500/- under the head of future loss of income.

7. The appellant would be entitled to a sum of Rs.13,500/- in addition to what has already been awarded to him. He would be entitled to interest at the rate of 6% per annum from the date of the claim petition till the date of realisation. Both the respondents are jointly and

severally held liable to pay the said amount.

8. The appeal is allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

*kamlesh**